IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 192 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURFACE TREATMENT ENGINEERS - Petitioner(s)
Versus
NEWTON ENGINEERING & CHEMICALSLTD. - Respondent(s)

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Appearance :
MS MALTI BHARAT RAO for Petitioner(s) : 1,
MRS SWATI SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/11/2006

ORAL JUDGMENT

By way of this company petition, the petitioner has prayed for an appropriate order of winding up of the respondent company Newton Engineering and Chemicals Ltd contending inter alia that an amount of Rs.5,92,288.35p

is due and payable by the respondent company to the petitioner and the respondent company has neglected to make the said payment in spite of the repeated requests and statutory notice.

2. In response to the notice issued by this Court, an affidavit-in-reply is filed on behalf of the respondent company dated 21-4-2004 and in para 8 of the said affidavit-in-reply, it is disputed by the respondent company that an amount of Rs.5,92,288/- is due and payable by the respondent company to the petitioner as alleged. It is also further submitted in the affidavit-in-reply that in fact, the total outstanding amount payable to the company comes to Rs.2,67,237/-. Shri SN Soparkar, learned senior advocate appearing on behalf of the respondent company has submitted that still the respondent company is ready and willing to pay the said amount to the petitioner which is found to be due and payable to the petitioner company. Shri BT Rao, learned advocate appearing on behalf of the petitioner company has submitted that if the said amount is paid along with some interest without prejudice to the rights and contentions of the petitioner to file a suit for the balance amount which according to the petitioner is due

and payable by the respondent company, then the petitioner would be satisfied. Shri Soparkar, learned senior advocate has submitted that the aforesaid amount of Rs.2,67,237/- along with interest as may be directed by this Court from the date of affidavit-in-reply, will be paid to the petitioner within a period of one month from today.

3. Under the circumstances, the respondent company to make the payment of Rs.2,67,237/- alongwith interest at the rate of 7.5% from 1st May 2004 till the payment on or before 4-12-2006. It will be open for the petitioner to file suit before the competent Court for the balance amount which according to the petitioner is due and payable by the respondent company. This Court has not expressed any opinion on merits with regard to the claim of the petitioner with regard to the balance amount in favour of either party and the same can be dealt with as and when the suit is filed by the petitioner for balance amount. It goes without saying that it will be open for the respondent to defend the suit in accordance with law and on merits. The aforesaid amount to be accepted by the petitioner, would be without prejudice to his rights and contention to file suit, if any for the balance amount.

It will also be open for the petitioner to submit in the suit, if it is filed, with regard to limitation and contend that the limitation is saved, as company petition was pending before this Court.

4. With these, the present company petition is disposed off.

(M.R.SHAH,J.)

shekhar/-